

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Rule making related to the fire safe cigarette certification program

The State Fire Marshal Division hereby amends Chapter 61, “Reduced Ignition Propensity Cigarettes,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 101B.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 101B.

Purpose and Summary

These amendments to Chapter 61 update the process for submittal for certification and recertification and provide updated contact information for the program.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 30, 2020, as **ARC 5339C**. A public hearing was held on January 8, 2021. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Division on February 23, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Pursuant to the provisions of rule 661—10.222(17A), the Department does not have authority to waive requirements established by statute. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of 661—10.222(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on April 28, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend **661—Chapter 61**, title, as follows:
~~REDUCED IGNITION PROPENSITY CIGARETTES~~ FIRE SAFE CIGARETTE CERTIFICATION PROGRAM

ITEM 2. Rescind rule **661—61.2(101B)**.

ITEM 3. Renumber rule **661—61.1(101B)** as **661—61.2(101B)**.

ITEM 4. Adopt the following new rule 661—61.1(101B):

661—61.1(101B) Certification program established. A fire safe cigarette certification program is hereby established in the state fire marshal division. The program shall issue certifications as provided in this chapter.

61.1(1) The fire safe cigarette certification program is located at the following address:

State Fire Marshal Division

Attn: SFM Licensing Administration

215 East 7th Street

Des Moines, Iowa 50319

61.1(2) The program may be contacted by electronic mail at sfmlicense@dps.state.ia.us or by the United States Postal Service.

NOTE: The website for the fire safe cigarette certification program is dps.iowa.gov/divisions/state-fire-marshal/fire-safe-cigarettes.

ITEM 5. Amend renumbered rule 661—61.2(101B) as follows:

661—61.2(101B) Definitions. The following definitions apply to rules 661—61.1(101B) through 661—61.21(101B):

“*Agent*” means a distributor as defined in Iowa Code section 453A.1 authorized by the department of revenue to purchase and affix stamps pursuant to Iowa Code section 453A.10.

“*Certified reduced ignition propensity fire safe cigarette*” means a unique cigarette brand style that meets the following criteria:

1. The unique cigarette brand style has been tested in accordance with the test method prescribed in rule 661—61.3(101B) or has been approved pursuant to rule 661—61.4(101B).

2. The unique cigarette brand style meets the performance standard specified in rule 661—61.3(101B) or has been approved pursuant to rule 661—61.4(101B).

3. A written certification for the unique cigarette brand style has been filed by the manufacturer with the department and in accordance with rule 661—61.10(101B).

4. Packaging for the unique cigarette brand style has been marked in accordance with rule 661—61.13(101B).

“*Cigarette*” means a cigarette as defined in Iowa Code section 453A.1, but shall not mean a tobacco product as defined in Iowa Code section 453A.1.

“*Department*” means the department of public safety.

“*Fire safe cigarette*” means a cigarette certified pursuant to this chapter.

“*Manufacturer*” means any of the following:

1. An entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced, anywhere, which cigarettes the manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer.

2. The first purchaser of cigarettes anywhere, that intends to resell in the United States, cigarettes manufactured or produced anywhere, that the original manufacturer did not intend to be sold in the United States.

3. An entity that becomes a successor of an entity described in numbered paragraph “1” or “2” of this definition.

“*Quality control and quality assurance program*” means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the repeatability testing, and which program ensures that the testing repeatability remains within the required repeatability values specified in rule 661—61.3(101B).

“*Reduced ignition propensity cigarette*” means a cigarette certified pursuant to this chapter.

“*Repeatability*” means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.

“*Retailer*” means retailer as defined in Iowa Code section 453A.1.

“*Sale*” means any transfer of title or possession, exchange or barter, in any manner or by any means or any agreement. In addition to cash and credit sales, the giving of cigarettes as a sample, prize, or gift or the exchanging of cigarettes for any consideration other than money is considered a sale.

“*Sell*” means to sell, or to offer or agree to sell.

“*Unique cigarette brand style*” means a cigarette with a unique combination of the following:

1. to 7. No change.

“*Wholesaler*” means wholesaler as defined in Iowa Code section 453A.1.

ITEM 6. Amend subrule 61.4(2) as follows:

61.4(2) A manufacturer proposing an alternate test method and performance standard pursuant to this rule shall submit such proposal on a form provided by the department and shall send such form by certified mail, return receipt requested, to at the following address: specified in subrule 61.1(1).

~~Fire Marshal Division~~

~~State Public Safety Headquarters Building~~

~~215 East 7th Street~~

~~Des Moines, Iowa 50319~~

ITEM 7. Amend rule 661—61.6(101B) as follows:

661—61.6(101B) Retention of reports of testing. A manufacturer shall maintain for a period of three years copies of the reports of all tests conducted on all certified ~~reduced ignition propensity~~ fire safe cigarettes offered for sale and shall make copies of the reports available to the department and the office of the attorney general upon written request.

ITEM 8. Amend rules 661—61.10(101B) and 661—61.11(101B) as follows:

661—61.10(101B) Certification and fee.

61.10(1) Each manufacturer shall submit a written certification to the department attesting to all of the following:

a. Each certified ~~reduced ignition propensity~~ fire safe cigarette listed in the certification has been tested in accordance with rule 661—61.3(101B), 661—61.4(101B), or 661—61.5(101B).

b. Each certified ~~reduced ignition propensity~~ fire safe cigarette listed in the certification meets the performance standard specified in rule 661—61.3(101B) or approved under rule 661—61.4(101B).

61.10(2) Each certified ~~reduced ignition propensity~~ fire safe cigarette listed in the certification shall be described in the certification as follows:

a. The brand or trade name on the package.

b. The style of cigarette, such as light or ultra light.

c. The length of the cigarette in millimeters.

d. The circumference of the cigarette in millimeters.

e. The flavor of the cigarette, such as menthol or chocolate, if applicable.

f. Whether the cigarette is filtered or nonfiltered.

g. The type of cigarette package, such as soft pack or box.

h. The marking approved in accordance with Iowa Code ~~Supplement~~ section 101B.7.

i. The name, address, and telephone number of the laboratory, if different than the manufacturer, that conducted the test.

j. The date the testing was performed.

61.10(3) and 61.10(4) No change.

61.10(5) For each cigarette listed in a certification, a manufacturer shall pay, electronically or by mail, a fee of \$100 to the department. Checks shall be made payable to the “Iowa Department of Public Safety.” ~~The memo portion of the check shall state “Reduced ignition propensity cigarettes.”~~

61.10(6) A certification and fee submitted pursuant to this rule shall be ~~sent~~ submitted online as indicated on the state fire marshal’s website or mailed to the following address: address specified in subrule 61.1(1).

~~Fire Marshal Division~~

~~State Public Safety Headquarters Building~~

~~215 East 7th Street~~

~~Des Moines, Iowa 50319~~

An application shall not be considered complete unless all required information is submitted, including required attachments and fees, and shall not be processed until it is complete.

661—61.11(101B) Changes to the manufacture of a certified ~~reduced ignition propensity~~ fire safe cigarette. If a manufacturer produces a cigarette certified pursuant to this chapter and makes any change to the certified ~~reduced ignition propensity~~ fire safe cigarette thereafter that is likely to alter the ~~cigarette's~~ cigarette's compliance with the ~~reduced cigarette ignition propensity~~ standards specified in this chapter, prior to the ~~cigarette's~~ cigarette's being sold or offered for sale in this state, the manufacturer shall retest the cigarette in accordance with the testing standards specified in rule 661—61.3(101B) or shall propose an alternate test method and performance standard pursuant to rule 661—61.4(101B) or rule 661—61.5(101B), and shall maintain records of the retesting as required by rule 661—61.6(101B). Any altered cigarette that does not meet the performance standard specified in rule 661—61.3(101B) or approved pursuant to rule 661—61.4(101B) shall not be sold in this state.

ITEM 9. Amend rule 661—61.13(101B), catchwords, as follows:

661—61.13(101B) Marking ~~reduced ignition propensity~~ fire safe cigarette packaging.

[Filed 2/23/21, effective 4/28/21]

[Published 3/24/21]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/24/21.